



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Enclosure 5d
December 4, 2018

Ken Wagner, Ph.D.
Commissioner

December 4, 2018

TO: Members of the Council of Elementary and Secondary Education

FROM: Ken Wagner, Ph.D., Commissioner

RE: Procedural Rules for Appeals to and Hearings Before the Commissioner and
Procedural Rules for Appeals from Decisions of the Commissioner

As part of the State's Regulatory Reform, RIDE was directed to set forth uniform standards for the adjudication of Appeals to the Commissioner of Education, and set forth uniform standards for the adjudication of Appeals from Decisions of the Commissioner of Education.

The regulation was originally noticed as a "Direct Final" rulemaking. Since a public comment was received during the 30-day public review and comment period, the regulations was re-noticed and promulgated through the "Regular Rulemaking" process, triggering an additional 30-days public notice. No additional comments were received during the second round of public review and comment period.

RECOMMENDATION: THAT, the Council on Elementary and Secondary Education approves the Procedural Rules for Appeals to and Hearings Before the Commissioner and Procedural Rules for Appeals from Decisions of the Commissioner.

TITLE 200 – BOARD OF EDUCATION

CHAPTER 30 – Department of Elementary and Secondary Education

SUBCHAPTER 15 - PROCEDURES

PART 4 – Procedural Rules for Appeals to and Hearings Before the Commissioner and
Procedural Rules for Appeals from Decisions of the Commissioner

4.1 Authority

This part is promulgated pursuant to R.I. Gen. Laws §§ 16-39-6, 16-60-6(a)(vii), 16-60-6(a)(viii), and 16-60-4(a)(viii).

4.2. Purpose

- A. The purpose of this part is to set forth uniform standards for the adjudication of appeals to the Commissioner of Education, and
- B. Set forth uniform standards for the adjudication of appeals from decisions of the Commissioner of Education.

4.3 Procedural rules for appeals to and hearings before the Commissioner

- A. How to file an appeal
 - 1. Appeals must be sent to the Commissioner of Education by mail or by fax or e-mail. The person filing the appeal must provide the following information:
 - a. Name, telephone number, and address of the person filing the appeal;
 - b. A brief statement of the facts describing the nature of the appeal;
 - c. A statement of the relief being requested.
- B. Appeal schedule
 - 1. The Commissioner shall schedule hearings as promptly as possible or as required under R.I. Gen. Laws § 16-39-3.2.
- C. Decisions of the Commissioner

1. It is the policy of the Commissioner that decisions will be promptly rendered. Consistent with that policy, all hearing officers appointed to hear and recommend decisions on appeals under R.I. Gen. Laws Chapter 16-39 shall complete and transmit to the Commissioner their written recommended decisions no later than forty-five (45) working days following the completion of the appeal record and the Commissioner shall render a decision within thirty (30) days.
2. An appeal record shall be deemed to be complete when the hearing officer has in his or her possession the official transcript of the hearing and written legal briefs (when applicable) from the parties to the dispute. The Commissioner may grant an extension when both parties to the appeal request an extension or for other reasons he/or she deems appropriate.

4.4 Procedural rules for appeals from decisions of the Commissioner

A. Who may appeal

1. Any party aggrieved by a final decision of the Commissioner of Education pursuant to R.I. Gen Laws §§ 16-60-6(9)(vii) and (viii) may appeal to the Council on Elementary and Secondary Education (the “Council”), which shall decide and determine said appeal. Additionally, said Council may in its discretion decide and determine such other matters as it shall deem appropriate; provided, however, that appeals from decisions of the Commissioner under R.I. Gen. Laws §§ 16-5-30, 16-21.1-5, and/or 16-64-6 shall be made directly to Superior Court.

B. Time and manner of taking an appeal.

1. Appeal to the Council shall be instituted by filing a Notice of Appeal with the Council within (30) thirty days after the Commissioner mails notice of the decision. The Notice of Appeal shall specify the party taking the appeal and shall designate the decision or part thereof appealed from. Copies of said Notice of Appeal shall be mailed by the aggrieved party to the Commissioner and to all other parties of record (or, if these parties are represented by counsel, to their attorneys) at their last known address.

C. Record on appeal to the Council

1. The record compiled by the Commissioner and generated during the appeal process shall constitute the record on appeal in all cases, and it shall be transmitted to the Council by the Commissioner, upon written notice to the parties of record or their attorneys, within seven (7) days after the filing of the Notice of Appeal unless the time is extended by the Commissioner for good cause.

2. The record shall include those items required by the Rhode Island Administrative Procedures Act (R.I. Gen. Laws Chapter 45-35).
3. The Appeal shall be decided upon the basis of the record transmitted to the Council and the briefs filed as hereinafter provided.

D. Briefs

1. Brief of aggrieved party
 - a. Within twenty (20) days after the date on which the record is transmitted to the Council, the aggrieved party shall file with the Council a printed or typewritten or word-processed brief signed by counsel or the aggrieved party. The brief shall contain:
 - (1) a brief and concise statement of the case;
 - (2) the specific questions raised, duly numbered;
 - (3) the points made together with any authorities relied on in support thereof; and
 - (4) if relying on evidence in the record, a reference to where said evidence may be found.
2. Brief of adverse party
 - a. Within ten (10) days after the briefs of the aggrieved party have been filed, the adverse party shall file, in the Council offices, a brief in like form except that no statement of the case need be made beyond what may be deemed necessary to correct any inaccuracy or omission in the statement of the other party. The aggrieved party may file reply briefs within five (5) days after filing of the briefs of the adverse party.
3. Reply Brief
 - a. The aggrieved party may file reply briefs within five (5) days after filing of briefs of the adverse party.
4. Certificate of service
 - a. A copy of any brief filed pursuant to these rules shall be delivered to the opposing party or his or her attorney either by delivering a copy to him or her or by e-mail or mailing it to him or her at his or her last known address.

- b. A certificate of compliance with this paragraph signed by either the party or his or her attorney shall accompany the briefs filed with the Council

5. Extensions of time for filing

- a. The Chair of the Council Appeals Committee may extend the time for the filing of any brief due by up to thirty (30) days. Any further extension of time shall be granted only on a showing of good cause. The denial or the granting of an extension of time may be appealed to the Council Appeals Committee for a decision.

E. Oral argument

- 1. Each appeal shall be assigned for oral argument before the Council Appeals Committee at a time and place to be determined by the Committee. Said oral argument shall be undertaken to emphasize and clarify the written argument appearing in the briefs heretofore filed. The aggrieved party may waive the opportunity for oral argument, and must do so in writing to the Committee. The aggrieved party shall be entitled to open the arguments. Arguments shall be limited to twenty (20) minutes on each side.
- 2. The Council Appeals Committee shall consider the appeal and submit its recommendation for decision on the appeal to the Council based upon the briefs and record submitted.

F. Determination by the council

- 1. The Council shall decide and determine the appeal, or remand to its Appeals Committee, based upon the briefs and record submitted to the Council and the recommendation of the Committee.

G. The decision

- 1. The Council may affirm, modify, reverse, or remand the decision of the Commissioner.